

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: JOHN J. LYNCH

CIVIL ACTION No. 17-312  
(BANKRUPTCY No. 16-301)

IN RE: EVELYN RIVERA

CIVIL ACTION No. 17-408  
(BANKRUPTCY No. 16-16269)

**ORDER**

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2017, after consideration of the *pro se* Movant/Appellant, John J. Lynch's ("Movant") Motion to Consolidate, and all responses thereto, it is hereby ORDERED and DECREED that Movant's Motion is DENIED and Movant's Appeals are DISMISSED with prejudice.

BY THE COURT:

\_\_\_\_\_  
United States District Judge

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**RESPONSE IN OPPOSITION TO MOTION TO CONSOLIDATE THE APPEALS OF  
JOHN J. LYNCH AND JOINDER IN MOTIONS TO DISMISS FOR LACK OF  
JURISDICTION OF DEFENDANTS/APPELLEES, BAYVIEW LOAN SERVICING,  
LLC AND BANK OF AMERICA, N.A.**

Defendants, Bayview Loan Servicing, LLC, improperly pled as Bayshore Loan Servicing (“Bayview”), and Bank of America, N.A., improperly pled as Bank of America (“BOA”) (collectively, “Defendants”), by and through undersigned counsel, pursuant to the Court’s Order dated February 2, 2017, respectfully submits this Response to *pro se* Movant/Appellant, Jon J. Lynch’s (“Movant”) Motion to Consolidate Appeals under Docket Nos. 17-312 and 17-408, and join in the Motion to Dismiss the Movant’s appeals filed by co-defendants/appellees.

**I. INTRODUCTION**

Pursuant to the Court’s Order dated February 2, 2017, Defendants respectfully submit this response in opposition to Movant’s pending Motion to Consolidate the aforementioned appeals, and request dismissal of the Movant’s appeals as untimely. As set forth more fully in the Motion of co-defendant/Appellee, KML Law Group, P.C., incorrectly identified as KML Group, Inc. (“KML”) (Docs. 5 and 6), and the Response in Opposition to Movant’s Motion filed by co-

defendant/Appellee, Evelyn Rivera (“Rivera”) (Doc. 7), Movant’s three pending appeals, filed under Docket Nos. 17-cv-00312, 17-cv-00408, and 16-cv-005493 (the “Appeals”) are untimely and must be dismissed. For the reasons set forth herein, and the reasons set forth in KML’s and Rivera’s respective motions/responses, Defendants join in the requested relief and seek a denial of Movant’s Motions to Consolidate and dismissal of the pending Appeals.

## **II. STATEMENT OF FACTS AND PROCEDURAL HISTORY**

On September 7, 2016, Rivera filed a voluntary petition relief under Chapter 7, 11 U.S.C. § 101, *et seq.* in the United State Bankruptcy Court for the Eastern District of Pennsylvania, Docket No. 16-16269 (the “Bankruptcy Action”). Movant was listed a judgment creditor as a result of a default judgment entered on October 19, 2015, in the matter, *John J. Lynch v. Evelyn Rivera*, Court of Common Pleas of Philadelphia County, Case ID 150404249.

On September 12, 2016, Movant filed an Adversary Complaint in the Bankruptcy Action, as well as Petition to Proceed *in forma pauperis*, which was docketed as adversary case number 16-00301 (the “Adversary Action”). By Order entered on September 27, 2016, the Bankruptcy Court denied Movant’s Petition to Proceed *in forma pauperis*. Movant filed a notice of appeal of the September 27, 2016 Order on October 14, 2016.<sup>1</sup> Thereafter, all Defendants/Appellees filed Motions to Dismiss the Adversary Complaint, and by Order entered on November 30, 2016 and docketed on December 1, 2016, the Bankruptcy Court dismissed the Adversary Action. Movant filed a notice of appeal of the Bankruptcy Court’s December 1, 2016 Order on January 18, 2017.<sup>2</sup>

Subsequently, by Order entered on January 4, 2017 and docketed on January 5, 2017, the Bankruptcy Court granted Rivera’s Motion to Avoid the Lien Movant obtained by way of the

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<sup>1</sup> This appeal is docketed under case number, 16-cv-005493, and is currently pending before the Honorable Legrome D. Davis.

<sup>2</sup> This appeal is docketed under case number, 17-cv-00312.

default judgment. Movant filed a notice of appeal of the January 4, 2017 Order on January 25, 2017.<sup>3</sup>

On January 30, 2017, Movant filed the pending motions to consolidate the appeals docketed at 17-cv-00312 and 17-cv-00408. On February 2, 2017, this Court entered an Order requiring all non-movants to file a response to Movant's Motions to Consolidate.

### **III. ARGUMENT**

As set forth more fully in responses/motions of co-defendants/Appellees, which Defendants now join, Movant's request to consolidate the pending appeals is moot, as the Movant's appeals were filed out of time. Bankruptcy appeals are subject to the deadlines prescribed by Fed. R. Bankr. P. 8002. *In re Fryer*, 235 Fed. Appx. 951, 953 (3d Cir. Pa. 2007) (citing 28 U.S.C. § 158(c)(2)). If a party fails to file a timely notice of appeal, within fourteen (14) days after the entry of the judgment or order being appealed, Fed. R. Bankr. P. 8002(a)(1), the District Court lacks jurisdiction to review the Bankruptcy Court's Order. *In re Fryer, supra*, 235 Fed. Appx. at 953. *See also In re Caterbone*, 640 F.3d 108, 111-113 (3d Cir. 2011). Moreover, while the bankruptcy court may extend the time for a party to file a notice of appeal upon motion of the party, which demonstrates excusable neglect, pursuant to Fed. R. Bankr. P. 8002(d), "[i]f the bankruptcy court grants an extension, it may not 'exceed 21 days after the time prescribed by [Rule 8002], or 14 days after the order granting the motion to extend time is entered, whichever is later.'" *Bayer v. Bayer*, 558 B.R. 722, 731 (E.D. Pa. 2016) (citing Fed. R. Bankr. P. 8002(d)(3)).

In the instant action, *In re John J. Lynch*, Civil Action No. 17-cv-00312, the Bankruptcy Order Movant seeks to appeal was entered on November 30, 2016 and docketed on December 1, 2016. Even if Movant could demonstrate excusable neglect, and was afforded an additional

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<sup>3</sup> This appeal is docketed under case number 17-cv-00408.

twenty-one days to file a notice of appeal, the deadline for filing a notice of appeal filed by Movant on January 18, 2017, would still be untimely by thirteen days. Accordingly, Movant's notice of appeal of the Bankruptcy Court's November 30, 2016 Orders, which dismissed the Adversary Action, is untimely, and the appeal must be dismissed. As a result, Movant's Motion to Consolidate is moot.

#### IV. **CONCLUSION**

For the foregoing reasons, and for the reasons set forth in the response/motions of co-defendants/Appellees, which are adopted herein, it is respectfully requested the Court enter an Order denying Movant's Motion to Consolidate and dismissing Movant's appeals.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, Kyle Vellutato, hereby certify that on this date I caused a true and correct copy of the foregoing Response in Opposition to Movant, John J. Lynch's Motion to Consolidate and proposed Order to be filed via the Court's Electronic Case Filing ("ECF") system and/or first class mail upon the individuals listed below.

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Date: February 17, 2017

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